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Supreme Court, U.S.
FILED

071344 APR 22 2008

OFFICE OF THE CLERK

No. 07-

IN THE

# Supreme Court of the United States

PATRICIA CREPEAU,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

This case involves questions of constitutionality:

1. Whether the United States Department of Defense (DOD) acted improperly in apprehending me below ground, at the entrance to the Pentagon Metro, rather than above ground, at the entrance to the Pentagon Metro.

2. Whether the United States Department of Defense acted improperly in not allowing photographs, facing away from the Pentagon, of the demonstration against U.S. military policy with regard to Abu Ghraib.

3. Whether the United States Department of Defense is acting improperly in continuing to keep my camera, instead of returning it to me. For purposes of national security, I requested this, while the court case remains pending, but, if no national security purpose is served, then I think it should be returned to me.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Patricia Crepeau respectfully petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit in this case.

## OPINIONS AND ORDERS BELOW

The court of appeal's 1-23-08 opinion (2007-4817; case no. 1:07-cr-00242-LMB) (entered as a mandate on 2-14-08) upheld the U.S. District Court, Eastern District of Virginia decision dated 8-7-07 affirming the magistrate judge's dismissal of her pending criminal charge with prejudice.

## JURISDICTION

The court of appeal entered its judgment on 1-23-08 (mandate entered, 2-14-08). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause provides: "No State shall ... deprive any person of life, liberty or property without due process of law." U.S. CONST., amend. XIV, § 1.

Additionally, the Bill of Rights, Amendment I, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." U.S. CONST., amend. I.

## STATUTES INVOLVED

**32 U.S.C. § 234.15 Use of visual recording devices.** The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs.

§ CFR, Title 50, Appendix – War and National Defense, Photographing, Mapping or Other Representation of Military or Defense Properties [ACT JUNE 25, 1942, CH. 447, 56 STAT, 390].

§ 781 to 785. Omitted Codification. Sections 781 to 785 of this Appendix were omitted as terminated six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950, which emergency terminated two years from Sept. 14, 1976, pursuant to section 1601 of Title 50, War and National Defense.

Section 781, act June 25, 1942, ch. 447, § 1, 56 Stat. 390, provided that photographing, sketching, mapping, etc., of military or naval reservations, properties, equipment, etc., is unlawful.

Section 782, act June 25, 1942, ch. 447, § 2, 56 Stat. 391, provided authority to grant permission to photograph, sketch, map, etc., if national defense interests were not adversely affected.

Section 783, act June 25, 1942, ch. 447, § 3, 56 Stat. 391, provided penalties for violations of sections 781 to 785 of this Appendix.

Section 784, act June 25, 1942, ch. 447, § 4, 56 Stat. 391; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7817, 60 Stat. 1352, provided that sections 781 to 785 of this Appendix apply in all places within territory or jurisdiction of United States.

Section 785, acts June 25, 1942, ch. 447, § 5, 56 Stat. 391; June 4, 1953, ch. 97, 67 Stat. 41, provided that sections 781 to 785 of this Appendix be effective only until six months after termination of national emergency proclaimed by President on Dec. 16, 1950.

## STATEMENT OF THE CASE

The U.S. Constitution, Amendment I, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Therefore, U.S. citizens should be able to peaceably assemble, at federal agencies, to petition the government for changes in policies that may not serve the public interest or be in the interest of national security.

Additionally, there is the question of jurisdiction. The protest in question, and my photographing of it, took place above ground, at the entrance to the Pentagon Metro, but I wasn't apprehended there. I was

apprehended below ground, at the entrance to the Pentagon Metro, not by Metro police, but by Pentagon police.

32 U.S.C. § 234.15 states:

> "The use of cameras or other visual recording devices in restricted areas or in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs."

My photographs weren't for "advertising or commercial purposes", but were just for my scrapbook, because I was so glad to see someone other than myself who cared about Abu Ghraib, and what's being done to people there. Although signs were posted, I would never have noticed them, because this is part of my regular commute. Additionally, the signs are only "defense de" signs, with a red "prohibition" line drawn through a picture of a camera, and don't give the contact information for the Office of Public Communication, a part of the Office of the Assistant Secretary of Defense for Public Affairs, which it's my understanding is the right office to contact, to request permission for photographing, per 32 U.S.C. § 234.15.

I asked one of the protesters if it was okay for me to photograph him, and he said, "sure". Then, a few moments later, as I moved around the demonstration, I asked some of the others if it was okay to photograph

them, and they told me that they had been told by the military authorities to tell people not to. But, I was taking my photographs facing away from the Pentagon, so I thought it would be okay.

People who come to Washington, D.C., from all over our country, to protest the inhumane and unsafe policies of the U.S. military at least deserve to be able to take a few pictures of themselves, to take home with them. So I think provision should be made for photographs, facing away from the Pentagon.

Also, my camera hasn't yet been returned to me.

## REASONS FOR GRANTING THE PETITION

The U.S. Court of Appeals for the Fourth Circuit, offered only an unpublished opinion, which isn't binding precedent in this circuit. The per curiam discussion found no reversible error, and dispensed with oral argument.

Also, the U.S. District Court, Eastern District of Virginia, on page 5 of the Order affirming the initial decision, on lines 14 and 15, stated that "the defendant has made no allegation of bad faith with regard to the dismissal of the charge". But, on page 3 of the Appellant's Reply Brief, in the 5th paragraph, I did make the allegation of bad faith.

Additionally, and lastly, with full respect for the U.S. Court system, so far none of these courts have addressed the constitutionality of 32 U.S.C. § 234.15.

## CONCLUSION

The Court should grant certiorari and either remand this case back to the U.S. Court of Appeals for the Fourth Circuit, or consider it, itself, with regard to the constitutionality of 32 U.S.C. § 234.15.

Respectfully submitted,

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